

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

ROGER DALE LATHAM

APPELLANT

VS.

NO. 2015-TS-00722

TERRY W. JOHNSON,
JOHN W. ROBINSON III AND
CRAIG TRAHAN

APPELLEES

MOTION TO SUSPEND RECORD PREPARATION

COME NOW Appellees Terry W. Johnson, John W. Robinson III and Craig Trahan and, pursuant to M.R.A.P. 27, move this Court to suspend record preparation and in support would show as follows:

1. On May 6, 2015, Appellant filed his Notice of Appeal according to which he seeks to appeal “the final judgment of the Sunflower County Circuit Court entered by the Clerk on January 15, 2015, entering judgment on the Jury's verdict of December 20, 2014, awarding the Plaintiffs a judgment against the Defendant in the amount of \$176,352.24.” A true and correct copy of Appellant’s Notice of Appeal is attached hereto as **Exhibit “A.”**

2. However, the January 15, 2015 Judgment of the Sunflower County Circuit Court was not a “final judgment” from which an appeal can be taken, as it does not fully adjudicate the rights of the parties. A true and correct copy of the January 15, 2015 Judgment of the Sunflower County Circuit Court is attached hereto as **Exhibit “B.”**

3. In addition to the \$176,352.24 award referenced in the January 15, 2015 Judgment, Appellees assert claims for prejudgment and post-judgment interest, costs and attorneys’ fees. These claims were not adjudicated in the January 15, 2015 Judgment and are still pending in the trial court.

4. The January 15, 2015 Judgment expressly references Appellants’ claims for prejudgment and post-judgment interest, costs and attorneys’ fees and provides:

The Court shall hereafter take up Plaintiffs’ claims for pre and post-judgment interest, costs and attorneys’ fees associated with this action and determine the amounts, if any, which shall be awarded by the Court.

Exhibit “B.”

5. Pursuant to the instructions of the trial court, Appellees filed their Motion for Attorney Fees, Prejudgment Interest and Post-Judgment Interest on January 29, 2015. *See* Sunflower County Circuit Court Docket Sheet, Cause No. 2011-0083, a true and correct copy of which is attached hereto as

Exhibit “C.”

6. On June 29, 2015, the court conducted a hearing on the motion. *Id.* At the conclusion of the hearing, the court took the motion under advisement and indicated to the parties a ruling would be forthcoming.

7. To date, the trial court has not ruled on Appellees’ Motion for Attorney Fees, Prejudgment Interest and Post-Judgment Interest and, consequently, these claims have not been adjudicated. *Id.*

8. Therefore, as no final judgment had been entered by the trial court, Appellant’s May 6, 2015 Notice of Appeal was premature and, until a final judgment is entered by the trial court, Appellant’s appeal of the January 29, 2015 Judgment cannot proceed.

9. Appellees do not seek the dismissal of Appellant’s appeal. Rather, Appellees request the Court suspend record preparation pending the entry of a final judgment by the trial court.

10. Appellees further request the Court enter an order providing that: within fourteen (14) days of the entry of a final judgment by the trial court, the trial court clerk shall serve a notice of completion of the record in accordance with M.R.A.P. 11; upon service of the notice by the trial court clerk, the parties shall proceed with the examination and certification of the record in accordance with M.R.A.P. 10; and, upon certification of the record, this matter shall proceed in accordance with the Mississippi Rules of Appellate Procedure.

11. For these reasons and other good cause, Appellees request this Court suspend record preparation until such time as a final judgment is entered below.

12. Appellees request is made with good cause and not for purposes of delay.

WHEREFORE, PREMISES CONSIDERED, Appellees Terry W. Johnson, John W. Robinson III and Craig Trahan respectfully request this Court suspend record preparation until such time as a final judgment is entered below and this Court enter an order providing: within fourteen (14) days of the entry of a final judgment by the trial court, the trial court clerk shall serve a notice of completion of the record in accordance with M.R.A.P. 11; upon service of the notice by the trial court clerk, the parties shall proceed with the examination and certification of the record in accordance with M.R.A.P. 10; and, upon certification of the record, this matter shall proceed in accordance with the Mississippi Rules of Appellate Procedure.

Respectfully submitted this the 16th day of February, 2016.

TERRY W. JOHNSON, JOHN W. ROBINSON III AND
CRAIG TRAHAN

By: /s/ John W. Robinson III

John W. Robinson III (MSB # 9020)

LAW OFFICES OF JOHN W. ROBINSON III, PLLC

618 Crescent Boulevard, Suite 200

Ridgeland, MS 39157

Tel: 601.853.7600

Fax: 888.673.8320

Email: jwr@jwrobinsonlaw.com

CERTIFICATE OF SERVICE

I, John W. Robinson III, attorney for appellees Terry W. Johnson, John W. Robinson III and Craig Trahan, hereby certify that on this day I electronically filed the foregoing Motion to Suspend Record Preparation with the Clerk of the Court using the MEC system which sent notification of such filing to the following:

J. Edward Rainer
P.O. Box 258
Brandon, MS 39043

Further, I hereby certify that I have mailed by United States Postal Service the document to the following non-MEC participants:

Honorable Margaret Carey-McCray
Sunflower County Circuit Court Judge
P.O. Box 1775
Greenville, MS 38702-1775

Carolyn P. Hamilton
Circuit Clerk, Sunflower County, Mississippi
P.O. Box 880
Indianola, MS 38751

This the 16th day of February, 2016.

/s/ John W. Robinson III
John W. Robinson III